

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1315 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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AGRI. PRODUCE MARKET COMMITTEE

Versus

NARMADASHANKER MAGANLAL UPADHYAY

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Appearance:

MR BS PATEL for Petitioner

MR PK JANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/07/97

ORAL JUDGEMENT

1. The present petitioner is Agricultural Produce Market Committee at Visnagar and the respondent is one Narmadashanker Maganlal Upadhyay . It appears that initially in the compound of the Market Yard of the petitioner-Committee there was a canteen on the groundfloor and there was a lodge on the first floor.

Same was given to the respondent on a monthly rent of Rs.175/- which has been increased from time to time. It appears that the contractor, namely, respondent No.1 filed Reg.C.S.No.212/73 in the court of Civil Judge(JD) at Visnagar praying that the office bearers of the Market Committee should be injuncted from disturbing his possession and should not take any action to disturb his possession without due process of law. The suit was filed on 17.10.73. The suit came to be compromised between the parties on 17th August, 1979 and compromise was recorded by the court on that very day. The compromise terms which are at Exh.45 and which are in vernacular are reproduced herein in Gujarati.

2. It appears that the licence for the lodge and the canteen was in the name of the Market Committee and the contractor-respondent herein was shown as a retainer. However, his name came to be subsequently cancelled by the Deputy Collector as retainer as the lodge and the canteen were closed down for approximately one year and it is the case of the committee that it was thereafter constrained to take possession of the premises by drawing the panchnama. It is not known to this court as to whether the Deputy Collector has any authority to cancel the name of the contractor as retainer and as to whether he has heard the contractor before passing any order adverse to him. The fact that the canteen was closed down for a period of one year is not in dispute and the Market Committee has legally taken over the possession by

drawing panchnama.

3. The canteen contractor thereupon appears to have filed Regular Darkhast No.18/91 on December 11, 1991 in the court of Civil Judge (JD), Visnagar for direction to the Marketing Committee to return the possession of the premises including the canteen and lodge. It appears that the Marketing Committee appeared and filed its reply and resisted the claim of the contractor. However, the Ld.Civil Judge (JD), Visnagar by order dated 30.9.92 directed the Marketing Committee to handover the possession and the Court Commissioner was appointed for taking the possession.

4. Being aggrieved by such order passed by the Executing Court below Exh.1 in Darkhast No.18/91 the Committee has filed the present CRA before this Court.

5. Mr.B.S.Patel, Ld.counsel appearing for the Marketing Committee has vehemently urged before this Court that the respondent-Contractor has not carried out the terms and conditions of the Contract and has not run the lodge and canteen as per the terms and conditions of compromise which are reproduced hereinabove. He has submitted that therefore the Marketing Committee became entitled to take possession of the premises under consent terms and it has taken over the possession since the respondent-Contractor has even stopped running the canteen and lodge during the same period. Not running the canteen and lodge in the area of Marketing Committee caused lot of troubles to the members of the Committee as well as the agriculturists who would come to the market committee yard for the purpose of selling their produce and therefore the action was required to be taken. In the execution proceedings he interalia contended that no possession of canteen and lodge could be taken from him without following due process of law and that since possession was taken without following due process of law it was liable to be restored to him. He also contended that the suit was one in which execution proceedings could not have been filed and no execution proceedings could have been instituted. He also contended that the Judgment Debtors themselves have committed breach of consent. He admitted in his reply that the lodge and canteen were not run by him as retainer/licensor since last 12 months and therefore he has not committed any breach of terms and conditions of consent terms and the marketing committee has committed breach. He also contended that the market committee was entitled to take possession of the lodge and canteen if the contractor

committed breach of bylaws of the market committee, and therefore, also the execution against him was not maintainable. He also contended that it is not provided in the consent terms as to how the consent terms were to be executed and therefore also execution proceedings were not maintainable, and that the decree was one which was not executable. He also contended that in the consent terms it was agreed that he was the tenant and that at the most if possession was to be recovered from him it could be recovered under Gujarat Public Premises (eviction of unauthorised occupants) Act, 1973, and to that extent the consent terms were not executable. He also contended that even if there was breach of terms by him they ought to have prayed for specific performance under the provisions of Specific Relief Act. This contention is simply stated for the purpose of being rejected. The contention of the contractor that he was the tenant has no merit whatsoever in view of the fact that the market committee shall be deemed to be a "local authority" within the meaning of Clause 26 of Section 3 of Bombay General Clauses Act, 1904, and in that view of the matter. By virtue of section 4 of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the provisions of the Act shall not apply to any premises belong to Government or a local authority. In the present case, premises were admittedly belonged to Agricultural Produce Market Committee, which is a local authority, and therefore, it would not lie in the mouth of the contractor to contend that the relationship of landlord and tenant is created between him and the market committee, and that he would be governed by the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. He has also admitted in his reply that the Marketing Committee has stopped running the lodge and canteen because he has left the premises and that possession of the premises was taken by the market committee on 3rd December, 1991 in the presence of Mamalatdar after preparing panchnama and since then the market committee itself is running lodge and canteen in the premises. The market committee has itself obtained the license for running lodge and canteen and such license is granted since 1991 and admittedly the market committee itself is running the lodge and canteen.

6. In view of this reply which is filed by the contractor in the execution proceedings in my view nothing more is required to be decided in this petition. Admittedly, the contractor has not acted consistent with the terms and conditions. Admittedly, he has left the premises and the lodge and canteen was not being run for

a long period and the possession was ultimately required to be taken in the presence of Mamalatdar after following procedure of law. It is also admitted in the reply that thereafter lodge and canteen is being run by the market committee and in view of aforesaid admission made in reply, in my opinion, no case is made out by the contractor of being a tenant in possession or of any right of restoration of possession.

7. In view of the aforesaid the order which is passed by the Executing Court in Reg.Darkhast No.18/91 is hereby quashed and set aside and the marketing committee is permitted to run the lodge and canteen in the manner in which it was running. In the result, CRA succeeds. Rule is made absolute. The order of the executing court is quashed and set aside and the order passed by this court is substituted. No costs.

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